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by the Department of Veterans Affairs when such benefits are not based on the same disability or death.

[39 FR 18099, May 23, 1974, as amended at 41 FR 29120, July 15, 1976; 44 FR 45943, Aug. 6, 1979; 69 FR 46435, Aug. 3, 2004]

§ 3.710 Civil service annuitants.

Department of Veterans Affairs benefits may be paid concurrently with civil service retirement benefits. However, payments will be considered income as provided in § 3.262 (e) and (h).

[29 FR 15208, Nov. 11, 1964]

§ 3.711 Improved pension elections.

Except as otherwise provided by this section and § 3.712, a person entitled to receive section 306 or old-law pension on December 31, 1978, may elect to receive improved pension under the provisions of 38 U.S.C. 1521, 1541, or 1542 as in effect on January 1, 1979. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right to reelection. Any veteran eligible to make an election under this section who is married to a veteran who is also eligible to make such an election may not receive improved pension unless the veteran's spouse also elects to receive improved pension.

(Authority: Sec. 306(a)(1) of Pub. L. 95-588, 92 Stat. 2497)

[46 FR 11661, Feb. 10, 1981]

§ 3.712 Improved pension elections; surviving spouses of Spanish-American War veterans.

(a) *General.* A surviving spouse of a Spanish-American War veteran eligible for pension under 38 U.S.C. 1536 may elect to receive improved pension under 38 U.S.C. 1541. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right of reelection.

(b) *Aid and attendance.* A surviving spouse of a Spanish-American War veteran who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 1536 (a) and (b)

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and 1544 or the monthly rate authorized by 38 U.S.C. 1541 and 544, as 38 U.S.C. 1541 and 1544 were in effect on December 31, 1978, based on the surviving spouse's current income and net worth. Pension under 38 U.S.C. 1541 and 1544, as in effect on December 31, 1978, is not payable if the current size of the surviving spouse's net worth is a bar to payment under § 3.252(b) or if the surviving spouse's income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not required for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change.

(Authority: 38 U.S.C. 1536)

[44 FR 45943, Aug. 6, 1979, as amended at 46 FR 11661, Feb. 10, 1981; 61 FR 67950, Dec. 26, 1996]

§ 3.713 Effective dates of improved pension elections.

(a) *General.* Except as provided in paragraph (b) of this section an election to receive improved pension shall be effective the date of receipt of the election.

(b) *Persons entitled to pension on December 31, 1978.* The effective date of an election to receive improved pension filed before October 1, 1979, by a person entitled to receive either old-law pension or section 306 pension on December 31, 1978, shall be January 1, 1979, or if to the beneficiary's advantage, at any date after January 1, 1979, and before October 1, 1979. The amount of improved pension payable from the effective date of the election shall be reduced by the amount of old-law pension or section 306 pension paid to the beneficiary for such period.

(Authority: Sec. 306(d) of Pub. L. 95-588, 92 Stat. 2497).

[44 FR 45944, Aug. 6, 1979]

§ 3.714 Improved pension elections—public assistance beneficiaries.

(a) *Definitions.* The following definitions are applicable to this section.

(1) *Pensioner.* This means a person who was entitled to section 306 or old-law pension, or a dependent of such a person for the purposes of chapter 15 of title 38, United States Code as in effect on December 31, 1978.

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(2) *Public assistance.* This means payments under the following titles of the Social Security Act:

(i) Title I (Grants to States for Old Age Assistance and Medical Assistance to the Aged).

(ii) Title X (Grants to States for Aid to the Blind).

(iii) Title XIV (Grants to States for Aid to the Permanently and Totally Disabled).

(iv) Part A of title IV (Aid to Families with Dependent Children).

(v) Title XVI (Supplemental Security Income for the Aged, Blind and Disabled).

(3) *Medicaid.* This means a State plan for medical assistance under title XIX of the Social Security Act.

(4) *Informed election.* The term “informed election” means an election of improved pension (or a reaffirmation of a previous election of improved pension) after the Department of Veterans Affairs has complied with the requirements of paragraph (e) of this section.

(b) *General.* In some States only a person in receipt of public assistance is eligible for medicaid. When this is the case the following applies effective January 1, 1979:

(1) A pensioner may not be required to elect improved pension to receive, or to continue to receive, public assistance; or

(2) A pensioner may not be denied (or suffer a reduction in the amount of) public assistance by reason of failure or refusal to elect improved pension.

(c) *Public assistance deemed to continue.* Public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) payable to a pensioner may have been terminated because the pensioner's income increased as a result of electing improved pension. In this instance public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) shall be deemed to have remained payable to a pensioner for each month after December 1978 when the following conditions are met:

(1) The pensioner was in receipt of pension for the month of December 1978; and

(2) The pensioner was in receipt of public assistance (or a supplementary payment under Pub. L. 93-233, sec.

13(c)) prior to June 17, 1980, and for the month of December 1978, and

(3) The pensioner's public assistance payments (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) were discontinued because of an increase in income resulting from an election of improved pension.

(d) *End of the deemed period of entitlement to public assistance.* The deemed period of entitlement to public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) ends the first calendar month that begins more than 10 days after a pensioner makes an informed election of improved pension. (If the pensioner is unable to make an informed election the informed election may be made by a member of the pensioner's family.) A pensioner who fails to disaffirm a previously made election of improved pension within the time limits set forth in paragraph (e) of this section shall be deemed to have reaffirmed the previous election. This will also end the deemed period of entitlement to public assistance.

(e) *Notice of right to make informed election or disaffirm election previously made.* The Department of Veterans Affairs shall send a written notice to each pensioner to whom paragraph (b) of this section applies and who is eligible to elect or who has elected improved pension. The notice shall be in clear and understandable language. It shall include the following:

(1) A description of the consequences to the pensioner (and the pensioner's family if applicable) of losing medicaid eligibility because of an increase in income resulting from electing improved pension; and

(2) A description of the provisions of paragraph (b) of this section; and

(3) In the case of a pensioner who has previously elected improved pension, a form for the purpose of enabling the pensioner to disaffirm the previous election of improved pensions; and

(4) The following provisions of Pub. L. 96-272, sec. 310(b)(2)(B):

(i) That a pensioner has 90 days from the date the notice is mailed to the pensioner to disaffirm a previous election by completing the disaffirmation form and mailing it to the Department of Veterans Affairs.

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(ii) That a pensioner who disaffirms a previous election shall receive, beginning the calendar month after the calendar month in which the Department of Veterans Affairs receives the disaffirmation, the amount of pension payable if improved pension had not been elected.

(iii) That a pensioner who disaffirms a previous election may again elect improved pension but without a right to disaffirm the subsequent election.

(iv) That a pensioner who disaffirms an election of improved pension shall not be indebted to the United States for the period in which the pensioner received improved pension.

(Authority: Pub. L. 96-272, sec. 310; 94 Stat. 500)

(f) *Notification to the Social Security Administration.* The Department of Veterans Affairs shall promptly furnish the Social Security Administration the following information:

(1) The name and identifying information of each pensioner who disaffirms his or her election of improved pension.

(2) The name and identifying information of each pensioner who fails to disaffirm and election of improved pension within the 90-day period described in paragraph (e)(4)(i) of this section.

(3) The name and identifying information of each pensioner who after disaffirming his or her election of improved pension, subsequently reelected improved pension.

(Authority: 38 U.S.C. 501)

[46 FR 11661, Feb. 10, 1981, as amended at 71 FR 44919, Aug. 8, 2006]

§ 3.715 Radiation Exposure Compensation Act of 1990, as amended.

(a) *Compensation.* (1) A radiation-exposed veteran, as defined in 38 CFR 3.309(d)(3), who receives a payment under the Radiation Exposure Compensation Act of 1990, as amended (42 U.S.C. 2210 note) (RECA), will not be denied compensation to which the veteran is entitled under 38 CFR 3.309(d) for months beginning after March 26, 2002.

(2) A veteran who is not a “radiation-exposed veteran,” as defined in 38 CFR 3.309(d)(3), is not entitled to VA com-

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pensation for disability caused by a disease that is attributable to exposure to radiation for which the veteran has received a payment under RECA.

(b) *Dependency and indemnity compensation.* A person who receives a payment under RECA based upon a veteran’s death will not be denied dependency and indemnity compensation to which the person is entitled under 38 CFR 3.5 and 3.22 for months beginning after March 26, 2002.

(c) *Offset of RECA payment against VA benefits.* Notwithstanding paragraph (a) or (b) of this section, the amount of a RECA payment will be deducted from the amount of compensation payable pursuant to § 3.309(d) or the amount of dependency and indemnity compensation payable.

(Authority: 38 U.S.C. 1112(c)(4), 1310(c); 42 U.S.C. 2210 note)

[71 FR 44919, Aug. 8, 2006]

RETIREMENT

§ 3.750 Entitlement to concurrent receipt of military retired pay and disability compensation.

(a) *Definition of military retired pay.* For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient’s service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration.

(b) *Payment of both military retired pay and disability compensation or improved pension—*(1) *Compensation.* Subject to paragraphs (b)(2) and (b)(3) of this section, a veteran who is entitled to military retired pay and disability compensation for a service-connected disability rated 50 percent or more, or a combination of service-connected disabilities rated at 50 percent or more, under the schedule for rating disabilities (38 CFR part 4, subpart B), or based on a determination of individual unemployability under 38 CFR 4.16, is